



© Queensland Museum



© Johnny
Keny/Shutterstock



© Rachel



© Marsha

Enabling the Global Promise of Marine Biotechnology: Challenges and Opportunities Posed by Emerging International Legal Frameworks

Lyle Glowka
Senior Legal Advisor, CBD Secretariat

Overview

- **Origins of access and benefit sharing (ABS)**
- **CBD / Nagoya Protocol innovations**
- **Challenges and opportunities**



CBD: Basic Framework for Action



- **Near universal membership:** 193 parties (192 States and the European Union) (multi-stakeholder forum)
- **Comprehensive “biodiversity” focus**
- **Applicable to terrestrial and marine areas**
- **National level:** Broad commitments for action by Governments
- **Three objectives:**
 - ✓ Conservation
 - ✓ Sustainable use
 - ✓ Benefit-sharing from use of genetic resources (access and benefit-sharing)

Origins of ABS



Pre-CBD: Access by anyone for any purpose with no obligation to share benefits with provider(s)

Equity: Primary principle driving CBD ABS negotiations

- Aim: Redirect benefit flows back to provider(s)

Conservation incentives: Provide a value to biodiversity to help conservation

- Aim: Direct benefits back to provider(s) for biodiversity conservation

High expectations for big financial windfalls from biotech (“Green Gold”)

CBD Innovation: “New” Equity Relationship



Access to genetic resources

IN EXCHANGE
FOR

Fair and equitable share of the benefits
derived from their use

CBD Provisions



Fundamental access-related principles (Art 15):

- Sovereign rights over natural resources (art 15(1))
- Prior informed consent (PIC) (art 15(5))
- Mutually agreed terms (MATs) (including the sharing of benefits arising from the commercial and other utilization of genetic resources) (art 15(4) and (7))

CBD Provisions



Six fundamental benefit-sharing obligations:

- Research and development results (article 15(7))
- Commercial or other benefits derived from use (article 15(7))
- Access / transfer of technology using genetic resources (article 16(3))
- Participation in biotechnological research on genetic resources (article 19(1))
- Priority access to results / benefits arising from biotechnological use (article 19(2))
- Traditional knowledge associated with genetic resources (article 8(j))

The Need for Legal Certainty



Outstanding key implementation challenges not fully addressed by CBD...

Provider countries:

- **Capacity to regulate access and monitor use**
 - ✓ How to ensure benefit-sharing after materials leave country?
 - ✓ How to prevent / respond to misappropriation / misuse?
 - ✓ Role / responsibilities of “user” countries?
- **Derivatives of genetic resources?**

Users: Clear, transparent and efficient access rules / procedures

Nagoya Protocol: At Glance



WSSD (2002): “International regime”

CBD (2004): WG-ABS mandated to negotiate

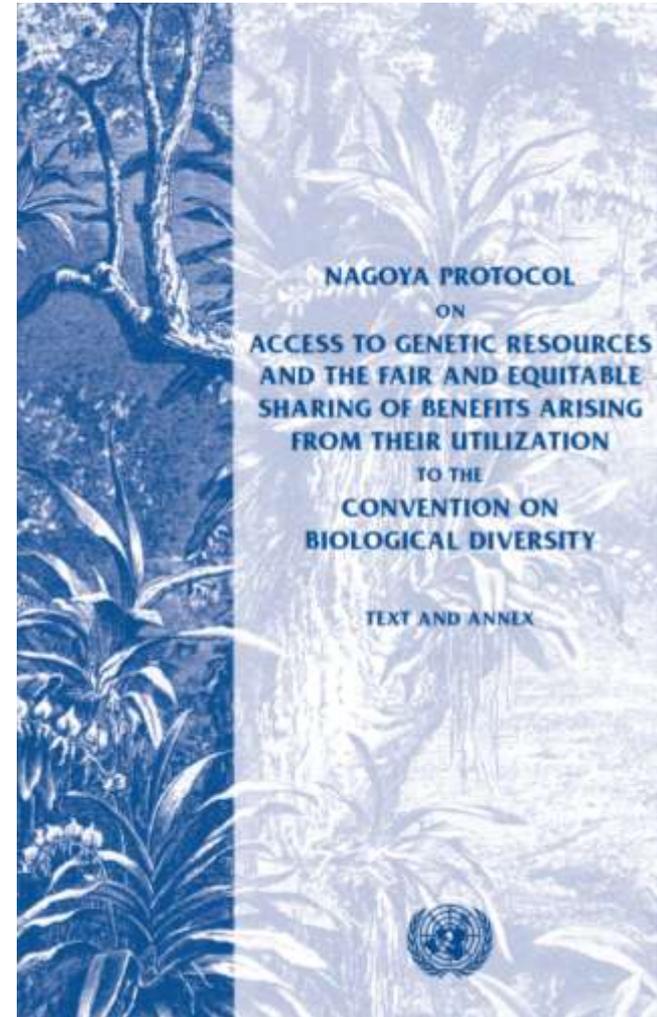
- ✓ Highly participatory process

Adopted: 29 October 2010

- ✓ 92 signatories
- ✓ 7 ratifications (Fiji, Gabon, India, Jordan, Mexico, Rwanda, Seychelles)
- ✓ Entry into force: 50 ratifications

Operationalizes: CBD third objective and article 15

Objective: Ensure benefits arising from utilization of genetic resources are shared fairly and equitably



Nagoya Protocol Innovations



Scope

- ✓ Biochemical compounds

Access-related measures

- ✓ Legal certainty, clarity and transparency
- ✓ Encourage research contributing to biodiversity conservation (+/- simplified measures)

Benefit-sharing measures

- ✓ Utilization, subsequent applications and commercialization
- ✓ Monetary and non-monetary benefits (short, medium and long-term)
- ✓ Direct benefits to biodiversity conservation

Compliance measures

Challenges and Opportunities: Nagoya Protocol and Marine Genetic Resources



- **Greater awareness on marine genetic resources (MGRs)**
 - ✓ Coastal states: Potential value of MGRs
- **Provider countries**
 - ✓ Finding appropriate balance: Protecting interests, facilitating access to MGRs and encouraging MSR (Protocol/UNCLOS mutual supportiveness)
 - ✓ Capacity-building
- **Users**
 - ✓ Building trustful collaborations
 - MSR community: Understand need for PIC, MATs and meaningful benefit sharing
 - ✓ Implementation of meaningful compliance measures
- **Protocol entry into force (balanced collection of States)**
 - ✓ More predictable conditions for ABS
 - ✓ Greater legal certainty



Life in harmony, into the future
いのちの共生を、未来へ
COP 10 / MCP 5

Thank you for your attention!

Secretariat of the Convention on Biological Diversity

413 Saint Jacques Street, Suite 800
Montreal, QC, H2Y 1N9, Canada

Tel: +1 514 288 2220

Fax: + 1 514 288 6588

Email: secretariat@cbd.int

www.cbd.int